

Myan Revocable Trust

v.

Town of Meredith

Docket No.: 17789-98PT

DECISION

The "Taxpayer" appeals, pursuant to RSA 76:16-a, the "Town's" 1998 assessment of \$206,200 (land \$139,900; buildings \$66,300) on a single-family home and garage/guest house on a 22,666 square-foot lot (the "Property"). For the reasons stated below, the appeal for abatement is denied.

The Taxpayer has the burden of showing the assessment was disproportionately high or unlawful, resulting in the Taxpayer paying a disproportionate share of taxes. See RSA 76:16-a; TAX 203.09(a); Appeal of City of Nashua, 138 N.H. 261, 265 (1994). To establish disproportionality, the Taxpayer must show that the Property's assessment was higher than the general level of assessment in the municipality. Id. We find the Taxpayer failed to prove disproportionality.

The Taxpayer argued the assessment was excessive because:

- (1) the Property was purchased in June, 1993, for \$150,000;
- (2) improvements made to the Property after the purchase were reinsulating, residing and

rewiring of the house; residing and raising the roof, installing an activity room with bathroom and rewiring of the garage; repaving the driveway and installation of a new septic system;

(3) a review of comparable sales on Black Brook Road show the Property is overassessed; and

(4) the Property should be assessed at \$150,041 (land, \$100,000; buildings, \$50,041).

The Town argued the assessment was proper because:

- (1) since the purchase of the Property, the Taxpayer has done significant improvements to the Property (windows, doors, insulation, plumbing, sheetrock, repair and replace existing garage roof and house deck); two building permits filed with the Town estimated the total cost to be \$21,200;
- (2) two comparable sales on Black Brook Road support the assessment;
- (3) the Taxpayer's comparable sales are not comparable in terms of house sizes and topography of the lots, one comparable did not sell as the Taxpayer indicated, and one property was purchased for its land; and
- (4) the Taxpayer's land calculations are incorrect based on a review of the original subdivision plans and the abutting deeds.

After the close of the hearing on February 16, 2000, the Town filed a request to reopen the record relative to the Taxpayer's testimony of the improvements made to the Property subsequent to its purchase in 1993. The board granted the request and held a limited hearing on March 17, 2000, and received additional testimony from the parties as to the extent and cost of the work performed on the Property. This decision is based on the evidence received on both dates.

Board's Rulings

Based on the evidence, the board finds the Taxpayer failed to carry its burden.

Three general issues were raised during the hearings:

- 1) the size of the lot;
- 2) Parties' sales; and
- 3) improvements done to the Property.

The board will address the evidence in that order.

- 1) The board finds the lot area contained on the assessment-record card is reasonable based on the Town's research of the original plan and the subsequent deeds (Taxpayer's and abutting deeds). The board finds the tax map is, in this case, the least reliable source of evidence and should not be used as the basis for the lot-area calculation as the Taxpayer attempted to do.
- 2) Of all the sales submitted to us by the parties, none were truly comparable; however, based on the sales submitted, the board was able to conclude that the assessment was reasonable for the following reasons.

A. Two sales (70 Black Brook Road and 138 Black Brook Road), which sold earlier in 1993 and later resold in 1997 and 1998, indicate the market for waterfront property was appreciating during this time period. Also, the 138 Black Brook Road sale indicates the market was recognizing value added due to renovations. Based on this evidence, the board concludes the Taxpayer's position that the Property has not increased in value over the 1993 sale price of \$150,000 is erroneous. Besides the specific sale evidence, the Town's testimony and the board's review of the Town's 1998 equalization ratios (both general and stratified) indicate that waterfront properties in general have been appreciating since 1993. The Town's estimate of a 32% increase between the sale dates of 70 Black Brook Road equates to an approximate 7.5% increase per year during that time period which, when applied to the Taxpayer's purchase price, indicates an approximate 35.5% increase or a market value estimate in 1998 of \$203,250 ($\$150,000 \times 1.355$). The board realizes this is strictly one estimate as to the reasonableness of the assessed value and should not be given too much exactitude. It does, however, indicate that applying no appreciation is not proper.

B. The board agrees with the Town's testimony that the sale of 70

Black Brook Road and 36 Black Brook Road bracket the likely market value of the Property. 70 Black Brook Road, which sold for \$137,500 in September of 1997, consists of a significantly smaller and inferior cottage on a lot with more difficult topography than the Property. While the lot was larger and had more water frontage, the board finds the inferior dwelling and topography more than offset the size difference. Certainly if this inferior property could fetch \$137,500 six months before the assessment date, the Property with better topography, a superior dwelling and guesthouse would command significantly more. On the other hand, 36 Black Brook Road is a superior property, in general, with a larger lot and better overall topography in the developed area of the lot. The board finds the Town's assessments of both these properties reasonably reflect the differing components and in comparing them to the Property's assessment indicates the Town's assessment is proportional.

C. The board was unable to give much weight to the Taxpayer's sales because one appears not to have actually sold and the other two sales are dissimilar enough in either topography or the size of the cottage to be used as a direct correlation of value for the Property.

3) Based on the testimony and evidence received, the board finds significant repair, renovations and improvements were performed by the Taxpayer subsequent to the purchase. A summary of the work performed is as follows.

HOUSE

- complete rewiring
- insulation and vinyl siding
- exterior wall and sheetrock repairs due to ant damage
- approximately half of the windows replaced
- several doors, including sliding glass doors, replaced
- enlarged pressure-treated deck
- built and installed new kitchen counter-top

GARAGE/GUEST HOUSE

- raised roof, added dormer and skylights and resingled
- sheetrocked, insulated and wired second floor
- installed second-story bathroom
- replaced first-floor kitchen cabinets
- vinyl sided and replaced all windows

GENERAL IMPROVEMENTS

- repaved driveway
- installed new septic system

At the initial hearing, the Taxpayer testified the estimated total cost of work done to the house and garage was \$8,000. After the second hearing, the total documented costs were in excess of \$20,000 not including the driveway, septic and several non-invoiced items. The inconsistency between the evidence provided on the two hearing dates undermines the Taxpayer's overall credibility. Even without such a finding, the board was convinced that because of the magnitude of the work (which took the Property from a questionable year-round status to an insulated, year-round dwelling with an approved septic system), such work would be perceived in the market as adding to the Property's value and, thus, its market value would be greater than its 1993 sale price of \$150,000. Further, due to the dissimilarity of the Taxpayer's sales, we find they do not support the Taxpayer's contention that the renovations contributed no value above the purchase price.

Requests for Costs

Both parties submitted requests for costs. The board is authorized to award costs as in the superior court. RSA 71-B:9; TAX 201.39. Costs are awarded where an appeal was frivolously filed or maintained.

The board finds no basis exists in the board's rules under TAX 102.13 and 201.39 for granting the Taxpayer's requests.

The board does grant the Town's requests for costs for the time its representative was at the second hearing date (2.0 hours x \$19.60 per hour = \$39.20). The board finds the second hearing date would have been unnecessary if the Taxpayer had not misrepresented certain facts at the initial hearing relative to the work done to the Property. The board could not agree with the

Taxpayer's representation that the difference of costs attributable to the work was due solely to a lapse of time and memory. The magnitude of the difference between the two estimates is significant, and the Taxpayer had responded to the Town's interrogatories sent to her in January, 2000, that the work cost significantly more than what she repetitively testified to at the initial hearing. The Taxpayer shall pay to the town this \$39.20 within 10 days of the clerk's date below, sending a copy of the payment letter to the board. If the Taxpayer fails to so comply, the Town may file an enforcement motion with the board, and then the board may file an enforcement action in the Merrimack County Superior Court.

A motion for rehearing, reconsideration or clarification (collectively "rehearing motion") of this decision must be filed within thirty (30) days of the clerk's date below, not the date this decision is received. RSA 541:3; TAX 201.37. The rehearing motion must state with specificity

all of the reasons supporting the request. RSA 541:4; TAX 201.37(b). A rehearing motion is granted only if the moving party establishes: 1) the decision needs clarification; or 2) based on the evidence and arguments submitted to the board, the board's decision was erroneous in fact or in law.

Thus, new evidence and new arguments are only allowed in very limited circumstances as stated in board rule TAX 201.37(e). Filing a rehearing motion is a prerequisite for appealing to the supreme court, and the grounds on appeal are limited to those stated in the rehearing motion. RSA 541:6. Generally, if the board denies the rehearing motion, an appeal to the supreme court must be filed within thirty (30) days of the date on the board's denial.

SO ORDERED.

BOARD OF TAX AND LAND APPEALS

Paul B. Franklin, Chairman

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Michele E. LeBrun, Member

Certification

I hereby certify that a copy of the foregoing decision has this date been mailed, postage prepaid, to Colette Worsman, Trustee for Myan Revocable Trust, Taxpayer; and Chairman, Board of Selectmen of Meredith.

Date: March 29, 2000

Lynn M. Wheeler, Clerk

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